

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LATASHA M. WINCE,

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC
COMPANY, et al.,

Defendants.

No. 2:23-cv-00385-MCE-JDP

MEMORANDUM AND ORDER

On January 18, 2023, Plaintiff Latasha M. Wince ("Plaintiff") filed her Complaint in the Superior Court of California, County of Sacramento, against her former employer Pacific Gas and Electric Company ("PG&E") and supervisor Janae Valencia ("Valencia") (collectively, "Defendants"), alleging the following causes of action: (1) Race Discrimination, Harassment, and Retaliation in Violation of California's Fair Employment and Housing Act, California Government Code §§ 12940 et seq. ("FEHA"), against Defendants; (2) Wrongful Termination in Violation of Public Policy against PG&E; (3) Failure to Take All Reasonable and Necessary Steps to Prevent and Correct Discrimination, Harassment, and Retaliation in Violation of FEHA against PG&E; and (4) Intentional Infliction of Emotional Distress ("IIED") against Defendants. See Ex. A, Not. Removal, ECF No. 1, at 11–23 ("Compl."). PG&E subsequently removed the case

1 to this Court on March 1, 2023, pursuant to federal question jurisdiction under 28 U.S.C.
2 § 1331. See Not. Removal, ECF No. 1, at 1–9 (“Not. Removal”). Presently before the
3 Court is Plaintiff’s Motion to Remand. ECF Nos. 9 (“Pl.’s Mot.”), 11 (“PG&E’s Opp’n”).¹
4 For the following reasons, Plaintiff’s Motion is GRANTED.²

5 6 **BACKGROUND**

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8 On July 21, 2021, Plaintiff began working for PG&E as a Customer Service
9 Representative. See Compl. ¶ 12; Ponce Decl., ECF No. 6 ¶ 4 (declaration from
10 PG&E’s Labor Relations Specialist). At all relevant times, the terms and conditions of
11 Plaintiff’s employment were governed by a collective bargaining agreement (“CBA”)
12 entered into between PG&E and the International Brotherhood of Electrical Workers (the
13 “Union”). Id. ¶ 3. “During Plaintiff’s employment with PG&E, she was classified within
14 the Union-represented bargaining unit and therefore subject to the CBA.” Id. ¶ 4.
15 “Throughout her employment, Plaintiff was designated as a probationary employee.” Id.

16 In her Complaint, Plaintiff alleges that she was racially discriminated against by
17 her supervisor Valencia, who “frequently used Spanish during meetings and group
18 chats” and “provided instructions in Spanish” even though not everyone knew Spanish
19 and “the job information and training were provided to Plaintiff in English.” See Compl.
20 ¶¶ 15–16, 29. When Plaintiff raised this issue, Valencia allegedly stopped passing
21 customers’ reviews and compliments to her and assigned Plaintiff a mentor even though
22 Plaintiff “was quite familiar with her work and was doing it well[.]” See id. ¶¶ 17–20. On
23 March 4, 2022, Plaintiff states that, without any specific reason, PG&E terminated her
24 employment. Id. ¶ 21. Plaintiff alleges that she “was paying [the Union]’s dues, but in
25 order to fully benefit from them, she needed eight months of membership.” Id. ¶ 23.

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27 ¹ Plaintiff did not file a Reply brief.

28 ² Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Local Rule 230(g).

1 However, Plaintiff's termination occurred one week before she became a full member of
 2 the Union and thus, "she was unable to initiate any grievance procedures." Id. ¶¶ 22–23.

4 STANDARD

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 6 When a case "of which the district courts of the United States have original
 7 jurisdiction" is initially brought in state court, the defendant may remove it to federal court
 8 "embracing the place where such action is pending." 28 U.S.C. § 1441(a). There are
 9 two bases for federal subject matter jurisdiction: (1) federal question jurisdiction under
 10 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332. A district court
 11 has federal question jurisdiction in "all civil actions arising under the Constitution, laws,
 12 or treaties of the United States." Id. § 1331. A district court has diversity jurisdiction
 13 "where the matter in controversy exceeds the sum or value of \$75,000, . . . and is
 14 between citizens of different States, [or] citizens of a State and citizens or subjects of a
 15 foreign state" Id. § 1332(a)(1)–(2).

16 A defendant may remove any civil action from state court to federal district court if
 17 the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). "The
 18 party invoking the removal statute bears the burden of establishing federal jurisdiction."
 19 Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988) (citing Williams v.
 20 Caterpillar Tractor Co., 786 F.2d 928, 940 (9th Cir. 1986)). Courts "strictly construe the
 21 removal statute against removal jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th
 22 Cir. 1992) (internal citations omitted). "[I]f there is any doubt as to the right of removal in
 23 the first instance," the motion for remand must be granted. Id. Therefore, "[i]f at any
 24 time before final judgment it appears that the district court lacks subject matter
 25 jurisdiction, the case shall be remanded" to state court. 28 U.S.C. § 1447(c).

26 The district court determines whether removal is proper by first determining
 27 whether a federal question exists on the face of the plaintiff's well-pleaded complaint.
 28 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). If a complaint alleges only state-

1 law claims and lacks a federal question on its face, then the federal court must grant the
 2 motion to remand. See 28 U.S.C. § 1447(c); Caterpillar, 482 U.S. at 392. Nonetheless,
 3 there are rare exceptions when a well-pleaded state-law cause of action will be deemed
 4 to arise under federal law and support removal. They are “(1) where federal law
 5 completely preempts state law, (2) where the claim is necessarily federal in character, or
 6 (3) where the right to relief depends on the resolution of a substantial, disputed federal
 7 question.” ARCO Env’t Remediation L.L.C. v. Dep’t of Health & Env’t Quality, 213 F.3d
 8 1108, 1114 (9th Cir. 2000) (internal citations omitted).

9 If the district court determines that removal was improper, then the court may also
 10 award the plaintiff costs and attorney fees accrued in response to the defendant’s
 11 removal. 28 U.S.C. § 1447(c). The court has broad discretion to award costs and fees
 12 whenever it finds that removal was wrong as a matter of law. Balcorta v. Twentieth-
 13 Century Fox Film Corp., 208 F.3d 1102, 1106 n.6 (9th Cir. 2000).

14 ANALYSIS

15 A. Motion to Remand³

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 17 PG&E contends that this Court has federal question jurisdiction because Plaintiff’s
 18 causes of action are preempted by § 301 of the Labor Management Relations Act
 19 (“LMRA”), which confers federal jurisdiction over “[s]uits for violation of contracts
 20 between an employer and a labor organization representing employees . . .” See Not.
 21 Removal ¶¶ 16–23; 29 U.S.C. § 185(a). Section 301 extends “beyond suits alleging
 22 contract violations to state law claims grounded in the provisions of a CBA or requiring
 23 interpretation of a CBA.” Kobold v. Good Samaritan Reg’l Med. Ctr., 832 F.3d 1024,
 24

25 ³ Plaintiff argues that removal is improper, in part, because Valencia has not joined or consented
 26 to removal. See Pl.’s Mot., at 9–10. PG&E counters that “Valencia had not been served with the
 27 Complaint at the time of the filing of [PG&E’s] Removal, and to [PG&E’s] knowledge, still has not been
 28 served.” PG&E’s Opp’n, at 7. Only “defendants who have been properly joined and served must join in or
 consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). There is nothing in the present record
 indicating that Valencia has been served and Plaintiff’s lack of a Reply brief infers as much. Accordingly,
 remand on this ground is unwarranted.

1 1032 (9th Cir. 2016) (citation and internal quotation marks omitted). However, “not every
2 dispute concerning employment, or tangentially involving a provision of a [CBA], is pre-
3 empted by § 301[.]” Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985).

4 In determining whether LMRA preemption applies, “[t]he plaintiff’s claim is the
5 touchstone for this analysis; the need to interpret the CBA must inhere in the nature of
6 the plaintiff’s claim.” Cramer v. Consol. Frieghtways, Inc., 255 F.3d 683, 691
7 (9th Cir. 2001). Specifically, “adjudication of the claim must require interpretation of a
8 provision of the CBA.” Id. at 691–92. “[R]eference to or consideration of the terms of a
9 [CBA] is not the equivalent of interpreting the meaning of the terms.” Ramirez v. Fox
10 Television Station, Inc., 998 F.2d 743, 749 (9th Cir. 1993).

11 According to PG&E, “Plaintiff’s claims hinge on whether [PG&E] terminated
12 Plaintiff in violation of the CBA, whether Plaintiff’s termination was motivated [by] an
13 intent to deny Plaintiff ‘full’ benefits under the CBA, and whether Plaintiff had access to
14 the grievance procedure as a probationary employee under the CBA.” Not. Removal
15 ¶ 17. Because “[t]he resolution of each of these claims requires the interpretation of the
16 terms of the CBA,” PG&E contends that removal is proper. Id. The Court disagrees.

17 The issues underlying all four causes of action is whether Plaintiff has been
18 subjected to discrimination, harassment, and/or retaliation, and whether PG&E failed to
19 prevent those transgressions, none of which require interpretation of the CBA. See
20 Garcia v. Kaiser Found. Hosps., No. CV 08-4153 ODW (MANx), 2008 WL 4949045, at
21 *4 (C.D. Cal. Nov. 17, 2008) (“The Ninth Circuit has consistently held that state law
22 discrimination claims under the FEHA do not require courts to interpret the terms of a
23 CBA and are therefore not preempted by § 301.”) (collecting cases); id. at *5 (“Because
24 California law establishes that ‘FEHA’s provisions prohibiting discrimination may provide
25 the policy basis for a claim for wrongful discharge in violation of public policy,’ Plaintiff’s
26 [wrongful termination] cause of action exists independent of any contractual right and is
27 therefore not preempted by the LMRA.”) (quoting Estes v. Monroe, 120 Cal. App. 4th
28 1347, 1355 (2004)); Martinez v. Kaiser Found. Hosps., No. C-12-1824 EMC, 2012 WL

1 2598165, at *6 (N.D. Cal. July 5, 2012) (finding no § 301 preemption of IIED claim when
2 “the focus is on discriminatory treatment, rather than the substantive provisions of the
3 CBA.”). Instead, adjudication of these claims “turns on Defendants’ motives, not the
4 parties’ contractual rights—whatever the CBA establishes those rights to be.” Garcia,
5 2008 WL 4949045, at *4.

6 PG&E contends that the CBA does not exclude probationary employees like
7 Plaintiff from grievance procedures or just cause termination rights and cites provisions
8 of the CBA to those effects. See Not. Removal ¶¶14–15; PG&E’s Opp’n, at 3–4.
9 However, “[i]f the claim is plainly based on state law, § 301 preemption is not mandated
10 simply because the defendant refers to the CBA in mounting a defense.” Cramer, 255
11 F.3d at 691. For example, drawing all inferences in her favor, Plaintiff alleges, in part,
12 that she “was terminated just one week before becoming a full member of” the Union
13 and thus “unable to initiate any grievance procedures” in retaliation for complaining
14 about the alleged discrimination. See Compl. ¶¶ 12–25. Again, the question is PG&E’s
15 motive behind Plaintiff’s termination, not whether she was terminated in accordance with
16 the Union’s policies.

17 Ultimately, the Court finds that Plaintiff’s claims are not preempted by § 301 of the
18 LMRA. Therefore, Plaintiff’s Motion to Remand is GRANTED.

19 **B. Request for Attorneys’ Fees**

20 Should the Court grant her Motion to Remand, Plaintiff argues that her counsel is
21 entitled to \$2,000 in attorneys’ fees and costs because PG&E lacked an objectively
22 reasonable basis for seeking removal. See Pl.’s Mot., at 10–11. Although the Court
23 finds removal was improper, it does not agree that it was objectively unreasonable given
24 that “[t]he demarcation between preempted claims and those that survive § 301’s reach
25 is not . . . a line that lends itself to analytical precision.” Cramer, 255 F.3d at 691
26 (“‘Substantial dependence’ on a CBA is an inexact concept, turning on the specific facts
27 of each case, and the distinction between ‘looking to’ a CBA and ‘interpreting’ it is not

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1 always clear or amenable to a bright-line test.”). As such, the Court does not find that an
2 award of attorneys’ fees and costs is warranted.

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4 **CONCLUSION**

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6 For the foregoing reasons, Plaintiff’s Motion to Remand, ECF No. 9, is
7 GRANTED. The Clerk of Court is directed to remand this case back to the Superior
8 Court of California, County of Sacramento, and to close the case.

9 IT IS SO ORDERED.

10 Dated: July 14, 2023

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13 MORRISON C. ENGLAND, JR.
14 SENIOR UNITED STATES DISTRICT JUDGE
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